

FTFO Incident Review

FTFO Review Number: 19-008

Assigned By FDRB

Incident Number 170-891-442 CAD Number 173050010 Other ID 17-006 (OIS)

Day: Wednesday Date: 11/01/2017 Time: 00:03

Address: 77 Diamond St

Type of Call: 911 Reason on Scene: Citizen Flag Down

Type of Premises: Street (Not Sidewalk) Duration: 2 mins

Environmental Factors:

Subject Status: In Custody

Reviewed Materials:

- | | |
|---|---|
| <input checked="" type="checkbox"/> BWC Video | <input type="checkbox"/> Supervisory UOF Evaluation |
| <input type="checkbox"/> Third Party Video | <input checked="" type="checkbox"/> Photographs (Source: <u>CSI</u>) |
| <input checked="" type="checkbox"/> CAD | <input checked="" type="checkbox"/> Interviews (Transcripts and/or summaries) |
| <input checked="" type="checkbox"/> DEM Recordings | <input type="checkbox"/> Investigator's Summary Report |
| <input checked="" type="checkbox"/> Incident Report | <input type="checkbox"/> Other Material: _____ |
| <input type="checkbox"/> Supplemental Report(s) | <input type="checkbox"/> Other Material: _____ |
| <input checked="" type="checkbox"/> CSI Report | <input type="checkbox"/> Other Material: _____ |

Incident Overview

Officers were flagged down by a citizen regarding a suspicious vehicle. Officers made contact with the occupant. The occupant suddenly exited the vehicle and ambushed officers with a firearm. One of the officers was able to return fire and neutralize the suspect.

A. INCIDENTSUMMARY

1. Pre-DeploymentSummary --

(e.g. Communication, Coordinated Response)

Both officers were assigned to CSI, but were detailed to the Mission to the work the Halloween events. Off Hintzen and Off Fung were flagged down by a citizen about suspects possibly burglarizing a vehicle in the area of 77 Diamond St. The officers responded to the area and noticed the rear passenger door to the vehicle was open. Two other subjects were standing just outside of the vehicle, but backed away from the vehicle when they saw officers approaching the vehicle. As officers approached the vehicle, the rear passenger door slammed shut. Off Fung stated the two subjects outside of the vehicle appeared to be associated with the suspect inside the vehicle, but allowed them to leave the area, as they did not appear to have direct control of the vehicle. Off Hintzen and Off Fung made contact with the subject in the vehicle. Off Fung illuminated his flashlight towards the suspect and then looked back at the two subjects outside of the vehicle. Off Fung stated it looked like the male subject was shaking his head "no" towards the suspect inside the vehicle, as if he was trying to communicate with the suspect. The two subjects outside of the vehicle then walked S/B on Diamond St.

a. Consensus Evaluation

*RED requires remediation plan, including time table for completion.

Officers did a good job of advising dispatch of their location and their type of call. It would have been more advantageous had they to put this information out prior to making contact with the suspect. This affords officers more time and cognitive space to respond to any type of threat or ambush. It also lowers an officer's stress level as it eliminates an extra task for an officer to have to complete.

Off Fung's body worn camera (BWC) was activated, but much later during the encounter. Had BWC's been activated prior to the core transaction, officers could have increased their response time towards the threat by eliminating one more cognitive task. Off Fung also mentioned in his interview he was not in an assignment that would normally utilize the BWC.

Officers did a good job of approaching the vehicle and maintaining triangulation from both sides of the vehicle. This forced the suspect to break up his attention and probably saved Off Hintzen's life.

b. Dissenting Opinion

c. Recommendations

- FTFO should issue a "Tactical Refresher" reminding officers the importance of putting out information to dispatch prior to making contact a suspect, vehicle, etc (this refresher has been drafted and is awaiting approval).

2. Arrival/Engagement Summary --

(e.g. Communication, Coordinated Response, Containment, De-Escalation, Control)

Off Hintzen made a driver side approach to the suspect vehicle and Off Fung made a passenger side approach. Off Fung notified SFPD Communications of their stop and location. Officers attempted to have a conversation with the suspect of the vehicle, but were unable to as the suspect had rolled up all the windows, closed the door, and locked the vehicle. Off Hintzen ordered the suspect to open the door, to which the suspect replied that he couldn't as he didn't have the keys to the vehicle. When Off Fung illuminated the suspect, he noticed the suspect was rolling a joint. The suspect then was behaving strangely, and moved from the rear passenger seat into the driver seat. The suspect attempted to start the vehicle using vehicle's ignition button. The vehicle's horn began to sound. Officers were perplexed but continued to attempt to negotiate with the suspect. While Off Hintzen was talking to the suspect, Off Fung moved to the front of the vehicle to see if there was a license plate he could run, but there were only paper plates. Off Fung then moved to the rear of the vehicle, but noticed there were only paper plates on the vehicle. The suspect then opened the front driver door and fired multiple rounds from a handgun at Off Hintzen. Off Hintzen was struck by gunfire and his gun-firing hand was immobilized. Prior to the suspect exiting the vehicle, Off Fung thought Off Hintzen had his pepper spray in his hand. The suspect quickly turned around and fired rounds towards Off Fung.

Off Fung was initially slow to react, as he believed the pops he heard from the suspect's firearm were possibly Off Hintzen attempting to break the car windows of the suspect's vehicle. When Off Fung observed the suspect point a firearm at his head, Off Fung quickly retreated and drew his firearm. Off Fung fired backwards as he continued to run away from the suspect, who was actively pursuing Off Fung. Off Fung lost his balance and fell to the ground. Off Fung's firearm was also out of battery as he had a shot all his rounds. Off Fung sought cover behind a nearby vehicle and conducted an emergency reload. Off Fung then located the suspect and fired again at the suspect. Off Fung struck the suspect and heard the suspect moaning on the ground. Off Fung notified dispatch and requested immediate assistance.

a. Consensus Evaluation

*RED requires remediation plan, including time table for completion.

Off Fung was moving around a lot; moving from the front of the vehicle to the rear of the vehicle in effort to run the license plate. This is completely understandable, however, it also caused him to be distracted. Off Fung was then delayed in responding to the immediate threat of the suspect exiting the vehicle as he was preoccupied with other tasks. The cover officer's main duty is watching the suspect's hands and maintaining cover for the primary officer, who was preoccupied and engaged in conversation with the suspect.

b. Dissenting Opinion

c. Recommendations

- Provide training to reduce the probability of such lapses in safety protocols during low-key vehicle pullovers involving potential arrests. Review contact/cover roles during vehicle approaches.

C. ADDITIONAL NOTES

Add Additional Notes

Consensus Evaluation Arrival/Engagement Summary (cont'd from Pg.5)

After the suspect fired at Off Fung, Off Fung retreated S/B on Diamond St. While Off Fung was running away from the suspect, Off Fung was firing backwards, not looking at the suspect. Given the stress overload and the belief that Off Fung felt he would be shot and killed, Off Fung reacted using primal gross motor skills to compensate for being behind the reactionary curve. Nonetheless, as officers we are held to a higher standard and are accountable for every round fired. To the extent feasible, officers must take reasonable care when discharging his or her firearm so as not to jeopardize the safety of the public or officers. By firing backwards and not looking where his shot placement was, Off Fung violated one of the fundamental firearm safety rules; know your backdrop and everything beyond it. Secondly, as officers we are held accountable for every single round we fire, and each round must be assessed and re-assessed as the threat and level of resistance changes throughout an encounter. By blindly shooting backwards, Off Fung was not able to systematically account for each round he fired.

Off Fung did an excellent job seeking cover, performing an emergency reload, and reacquiring his sights on the suspect. During this chaotic encounter, Off Fung even managed to turn on his BWC, as he wanted to capture and memorialize any potential evidence of the encounter. Once Off Fung re-assessed the situation and recognized some of his rounds had struck and wounded the suspect, Off Fung immediately updated dispatch with his findings.

3. Use of Force/Tactical Summary --

(e.g. Threat Posed, Level of Resistance, Subject-Officer Factors, De- Escalation, Force Option decisions, Effectiveness)

First, the suspect ambushed officers with a firearm, attempting to kill both officers, which was a serious and deadly threat. The suspect was in essence carrying out a severe crime and meets the first standard of Graham vs Connor.

Second, the suspect shot Off Hintzen with multiple rounds, wounding Off Hintzen. The suspect then fired multiple rounds at Off Fung, not in an effort to escape, but actually pursued Off Fung attempting to inflict serious bodily injury or death. The suspect posed an immediate threat to officers, meeting the second criteria of Graham vs Connor.

Third, was the suspect actively resisting or attempting to evade arrest by flight? As illustrated above, the suspect was chasing Off Fung with a firearm, and firing multiple rounds. The suspect's level of resistance was active and aggressive.

Lastly, the Off Fung had to make a "split second decision" on what type of force to use while face with a "tense, uncertain, and rapidly evolving" situation. Therefore, in light of the above listed factors, an objective officers under the circumstances could have concluded reasonably that the use of a firearm was necessary to complete the suspect's arrest and neutralize his resistance.

Attempts were made to de-escalate and resolve the issue peacefully, as Off Fung and Off Hintzen used uniform presence and verbal persuasion to cajole the suspect out of the vehicle. Once the suspect shot at both Off Fung and Off Hintzen, efforts to de-escalate were no longer feasible.

a. Consensus Evaluation

*Red requires remediation plan, including time table for completion.

Off Fung's use of deadly force to neutralize an opponent who displayed a level of deadly force was reasonable; however, Off Fung's initial volley of rounds while he was running away and shooting his firearm blindly was not done with reasonable care. IAD's Summary Report OIS#17-006 reported "The bullet fragments removed from Officer Hintzen were examined and determined to be fired from Officer Fung's department issued Sig Sauer P226." When discharging their firearms, officers are reminded to when feasible, use reasonable care as not to jeopardize the public or other officers.

b. Dissenting Opinion

c. Recommendations

- Throughout 2017 and 2018, the SFPD had encountered several officer involved shootings where the officers were either ambushed or fired upon first by the suspect. The Department should continue training regarding ambushes and/or any surprise attack and its tactical considerations: pre-planning mindset, moving and shooting, seeking cover or a designating a rally point, effective retreating, etc.
- More scenario training should be implemented where officers are placed in scenarios that begin in a disadvantageous position and must problem solve their way through it.

4. Resolution Summary

(e.g. *Communication, Coordination, Contact Control, Medical Treatment, Supervision, Reporting*)

Looking back at the incident in hindsight, Off Fung and Off Hintzen had noticed several precontact cues the suspect was behaving strangely:

- (1) closing the door upon their arrival
- (2) the male subject outside of the car shaking his head "no" as if communicating with the suspect in the vehicle
- (3) the suspect saying he didn't have the keys to the vehicle
- (4) the suspect leaping from the rear seat to the driver seat in effort to start the vehicle and possibly escape.

Given all these pre-assaultive indicators, and that this car stop was not your "normal" or typical car stop, consider bounding back to a point of cover (usually a police car, but in this case both officers were on a foot beat). This affords officers more distance and time to react to any type of assault the subject wishes to inflict. It gives officers time to request additional resources and doesn't place officers behind the reactionary curve. The idea of giving up ground and disengaging after you've already established a dominant position up on the vehicle is a bit unorthodox, but also a much safer tactic. This is a scenario that forces officers to constantly be thinking, re-assessing, and repositioning themselves in dynamic situations.

a. Consensus Evaluation

*Red requires remediation plan, including time table for completion.

b. Dissenting Opinion

c. Recommendations

See page 9.

B. OFFICER SUMMARY

Name: Off Fung _____ Star: 42 _____

Month/Year Hired (SFPD): 2/2005 _____ Total LE Experience: 14 _____

Shift: Detailed (1600-0200) _____ Uniform: Class B _____

Force Options Carried (at time of incident) Firearm, baton, pepper spray _____

Mode of Transportation (at time of incident) On foot _____

1. Training Records

Current Assignment/Specialized Detail (if applicable): CSI _____

Last AO 01/30/17 _____ Last Range Qualification 7/6/17 _____

Training Meets Minimal Requirements for Assignment: YES NO

Specialized Training Included: _____

Training/Courses Needed: Critical Mindset Coordinated Control (CMCR)

2. Incident Performance --

a. Notes

There is no doubt that Off Fung was involved in a chaotic gun battle and fought for his life to survive an overwhelming force, and should be heralded for his ability to not quit when fighting from behind the reactionary curve. Off Fung did some good things throughout the course of the incident such as putting out radio traffic regarding his location and the type of call. It would have been more desirable had this information been made to Communications sooner. By notifying units of their suspicious vehicle sooner rather than later, they would have been able to gather assets sooner by the time a call for help was placed. The same can be said of turning on the BWC prior to making contact with a potential suspect. By putting out radio traffic sooner and activating one's BWC prior to contact, officer's now have more cognitive load to focus on the potential threat in front of them.

Off Fung mentioned in his interviews he observed the suspect make several movements from within in the vehicle that were not congruent with a "typical" suspicious vehicle approach. The suspect was in the rear of the vehicle then moved to the driver's seat. Upon police arrival, the suspect should have exited the vehicle upon officer's request, but he suspect diverted from officers instructions. The suspect then stated he could not exit, as he was not in possession of the keys, which is an odd and incongruent statement with someone who owns the vehicle. The suspect then attempted to start the vehicle, which conveyed his willingness to evade police. Given the numerous warning signs the suspect was attempting to flee the area and was completely ignoring all officer's commands, Off Hintzen and Off Fung had little to gain by staying close up on the vehicle. Had officers tactically disengaged to place of cover and conducted a high risk stop, officer's could have placed themselves in a much safer position.

After the suspect exited the vehicle and shot Off Hintzen, Off Fung was slow to react to Off Hintzen being shot. There is no doubt human factors played an element into Off Fung's reaction time, as Off Fung was a victim to auditory exclusion and previous officer vehicle takedowns led him to believe the window had possibly been broken by Off Hintzen. Nonetheless, had Off Fung been diligently watching the suspect's hands and overall movement, Off Fung would have been quicker able to process and react to the suspect's threats.

After the suspect exited the vehicle, the suspect hunted down Off Fung. Off Fung, in fear for his life, blindly shot back towards the suspect, albeit striking the suspect, but also blindly shooting in the general direction of the suspect and Off Hintzen. Nonetheless, by moving and shooting at the same time, Off Fung made himself a difficult target to strike, and forced the suspect to change his tactics and aggression. Once Off Fung found cover behind a parked vehicle, he was able to compose himself, reload his weapon, and properly re-assess the suspect with his firearm. Off Fung did an excellent job putting out radio traffic at this point, and even showed tremendous poise and courage by attempting to handcuff the suspect, after being in a gun battle.

b. Consensus Evaluation

*Requires remediation plan, including time table for completion.

c. Dissenting Opinion

d. Recommendations

- Off Fung has already attended the latest cycle of CPT and has been exposed to some of the new tactical concepts discussed in CMCR. However, he should attend the two-day CMCR force on force training.
- Off Fung should also meet with the FTFO unit for a short debriefing regarding the new passenger side approach and two-officer approach tactics.
- Review contact/cover roles during car stops.

B. OFFICER SUMMARY

[Add Another Officer](#)

Name: Off Hintzen _____ Star: 2009 _____

Month/Year Hired (SFPD): 12/07 _____ Total LE Experience: 9 yrs _____

Shift: Detailed (1600-0200) _____ Uniform: Class B _____

Force Options Carried (at time of incident) Firearm, baton, pepper spray _____

Mode of Transportation (at time of incident) On foot _____

1. Training Records

Current Assignment/Specialized Detail (if applicable): CSI _____

Last AO 04/16 _____ Last Range Qualification _____

Training Meets Minimal Requirements for Assignment: YES NO

Specialized Training Included: Left Department _____

Training/Courses Needed: Off Hintzen has since left the department following this incident.

2. Incident Performance --

a. Notes

Off Hintzen did a good job with Off Fung maintaining triangulation on the subject. Off Hintzen made a driver side approach, while Off Fung stayed on the passenger side. Officers never stacked on one single side, forcing the suspect to divert his attention to both officers.

Similar to Off Fung, Off Hintzen relayed in numerous interviews that he observed several pre-assaultive indicators and behaviors not congruent with a suspect exhibiting compliance. At some point during this core transaction, Off Hintzen should have been communicating with Off Fung some of his observations. There was a lack of communication between both officers and no effort to formulate a plan in effort to safely extract the suspect was made. Unfortunately, officers were acting independently from each other which later led to officers responding from behind the reactionary curve.

After the suspect exited the vehicle and shot Off Hintzen, Off Hintzen responded courageously and attempted to return fire. Off Hintzen attempted to draw his firearm, but his gun-firing hand was struck by gunfire, and he was unable to respond with deadly force. After being shot, Off Hintzen was able to gather his composure and notified SFPD Communications he had been struck by gunfire required immediate assistance. This was crucial, as Off Hintzen's radio traffic was the first call for help regarding the entire incident. Off Fung was not able to notify Communications as he was being chased by the suspect and involved in a gun battle.

b. Consensus Evaluation

*Requires remediation plan, including time table for completion.

c. Dissenting Opinion

d. Recommendations

- Off Hintzen has since left SFPD; however, exposure to the newest cycle of CPT and the tactical concepts discussed in CMCR would have been recommended to him. It would have also been recommended that he meet with the FTFO unit for a short debriefing regarding the new passenger side approach and two-officer approach tactics.

- Review contact/cover roles during car stops.

- Attend two-day CMCR force on force training.

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D. IMAGES

Click the boxes below to add photos

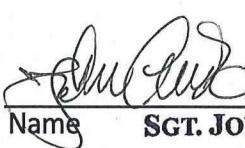
[Add Additional Photos](#)

E. FTFO REVIEW APPROVAL

FTFO Review Prepared By

Off.	Joel Aylworth	480	9/23/19
Rank	Name 	Star #480	Date

Approved/Forwarded By

-- A/L		1694	09/23/19
Rank	Name SGT. JOHN CRUDO #1694	Star	Date

Lt. Michael Nevin #166
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166
9-24-19